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Minutes of the Commission Meeting Held on November 1, 2007 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)

P James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Breckenridge (A – Oak Bluffs)	- Jim Powell (A – West Tisbury)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (A – Tisbury)	P Susan Shea (A – Aquinnah)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
P Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
- Mark Morris (A – Edgartown)	P Richard Toole (E – Oak Bluffs)
P Chris Murphy (A – Chilmark)	P Andrew Woodruff (E – West Tisbury)
- Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director), Paul Foley (DRI Analyst/Planner), Bill Veno (Senior Planner), Christine Flynn (Economic Development & Affordable Housing Planner), Jo-Ann Taylor (Coastal Planner/DCPC Coordinator)

The meeting was called to order at 7:40 p.m.

1. MOUJABBER ADDITION: DRI NO. 607 – PUBLIC HEARING

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

1.1 Hearing Notice

Doug Sederholm opened the public hearing on the discretionary referral from the Board of Selectmen of Oak Bluffs.

- The applicant is Joseph Moujabber
- The address is 10 Seaview Extension and is 0.18 acre.
- The public hearing is being held to determine whether a Discretionary Referral for a project should be reviewed by the Commission as a Development of Regional Impact.
- The applicant would like to build an addition to the existing home on Seaview Avenue. He would like to ascertain what type and size of addition would be acceptable with respect to Oak Bluffs zoning, the Copeland District Review Committee, the Cottage City Historical District Commission, and, if the DRI referral is accepted, the Commission.
- The Commission's decision at this meeting is whether to accept the Discretionary Referral.

1.2 Staff Report

Paul Foley gave the staff report.

- The proposal is an addition to an existing five-bedroom house, a pre-existing, non-conforming structure.
- The property is in the R-1 Residential District.
- The lot is 7,841 square feet in a zone that requires 10,000 square feet minimum.
- Local permits required are a building permit, Copeland District Certificate of Appropriateness and a special permit from the Zoning Board of Appeals, and possibly the Cottage City Historic Commission.
- The property abuts the B-2 District and is next to the Lookout Tavern
- The MVC has accepted a Discretionary Referral for a single-family house in the past. In 1994, the Commission accepted the referral a single-family home on North Water Street in Edgartown based on the impact on both public and private views of the water; the Commission approved the project with conditions, strictly defining the building envelope and landscaping.
- The Moujabber project is an addition to older home. The plans are from 2004 and don't describe the structure erected a few years ago. The 2004 plans are being submitted as part of the application, with the understanding that changes will likely be made in response to the guidance from various boards.
- Key issues are that the property is highly visible, and the North Bluff neighborhood is a small but distinct historic neighborhood.
- Included in Commissioners' packets are letters from Attorney Iverson, giving reasons why the Commission should not accept the referral, and a letter from the Commission's attorney and Oak Bluffs town counsel explaining that the Commission could accept the referral. Letters from the public are also included.

1.3 LUPC Report

Christina Brown gave the LUPC report:

- LUPC met with Mr. Moujabber and his agent/attorney.
- LUPC looked at the 2004 plan, and voted unanimously to recommend that the Commission accept the referral as a DRI.
- They suggested one or more LUPC meetings to discuss what kind of project might be appropriate, inviting Town Boards, particularly the Cottage City Historic District and Copeland District to participate in the discussions.
- At the same time, staff will be working on an analysis of the defining characteristics of the area.

Paul Foley added that David Wilson, Chairman of the Cottage City Historic District, sent a letter urging the Commission to accept the referral. He believes that members of the Cottage City Commission would be receptive to working with the Martha's Vineyard Commission.

John Breckenridge moved, and it was duly seconded, based upon LUPC discussions, to accept the discretionary referral and review the project as a DRI. The motion to accept is based on the concerns raised in the Selectmen's referral, the presence of the DCPC, the effects on the views of an important gateway to

the Island, concerns about fitting into the architectural nature of the historic neighborhood and waterfront streetscape, the way the Commission has previously dealt with other projects in the neighborhood such as the Lookout Tavern, and the Commission's previous DRI review of at least one single-family home because of the impact of views on the water and streetscape.

1.4 Public Comment

Kerry Scott, Oak Bluffs Selectmen, reported that the Board of Selectmen voted unanimously to refer the project to the Commission in the hopes that the Commission's power and expertise will be brought to bear on the project, which is in a very important location.

Valerie Hodges, owner of the abutting property, is very opposed to the project. It has caused emotional and financial distress. She passed around pictures of the view from their house in the 1970s and from the present.

Maureen Tripp said the abutting house is her mother's house. The structure that's been built is not a garage. It's an apartment complex. It needs to come down.

Andrea Wysocki added that the abutting house has been in their family for eighty years. The Moujabbers have built close to the lot line and created an unnatural sloping, so their own property is now being flooded in heavy rains.

1.5 Commission Discussion

Chris Murphy clarified that the question before the Commission is what is allowable on this property. The applicant wants to know what he can build so he can decide if he can adapt the existing structure to what he receives approval for.

John Breckenridge elaborated on the reasons for reviewing this project as a DRI.

- A key issue is that this is a gateway to the Island.
- LUPC recommended DRI review for the same reasons that the Commission was going to be reviewing the Lookout Tavern.
- Other town boards will be reviewing details of the project, addressing concerns raised by the judge. However, town boards don't have the power to review or regulate the view from the water.
- The Commission has the ability to give support to town boards.

Linda Sibley said the DRI process should tell the applicant what the Commission finds acceptable and improve interaction with town boards.

Doug Sederholm made the following comments.

- This is part of a DCPC and the Commission has had input in the Town's DCPC's regulations. The town's implementation of DCPC regulations was called into question by the judge.
- The question before the Commission is whether the project has sufficient regional impact for DRI review.
- Lookout Tavern, next door to the Moujabber property, was accepted for review because of its visual impact.

Paul Strauss said the applicant has said he had not received a great deal of guidance as to what might be acceptable. Commission review would probably result in a lot of discussion and guidance that might be helpful to the applicant.

Susan Shea said she thought the project had been reviewed by different Oak Bluffs boards/commissions. **Mark London** clarified that when it was originally submitted it was reviewed and denied by the Copeland District; the North Bluff is now part of the Cottage City Historic District so the project will be reviewed by it, as well.

Linda Sibley clarified that the district commissions can look at details of architecture but they can't consider visual impact from the roads or water.

Doug Sederholm clarified that regardless of local review, if the project has a regional impact; it's within the Commission's purview.

Andrew Woodruff commented that the Commission rejected reviewing a West Tisbury 15,000 square foot house on the north shore and did not review a 20,000 sq. ft. house in West Chop. He asked whether the Commission would be willing to review all houses that are referred?

Doug Sederholm responded that each case would be reviewed individually.

Christina Brown said this project has the unique issue of being part of the gateway to Oak Bluffs.

Ned Orleans said the Town has been wrestling with the subject and the project for four years. So far it hasn't been able to come up with a solution. The Commission is the only agency that has the ability bring the various parties together and provide guidance.

A voice vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: 0. The motion passed.

LUPC is scheduled for November 19th at 7:30 p.m. and Town Boards are invited.

2. MORGAN WOODS: DRI NO. 577 – REQUEST FOR MODIFICATION

Commissioners present: J. Athearn, J. Breckenridge, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Christina Brown recused herself and left the room.

For the applicant: Peter Freeman, attorney for Community Builders; Stephanie Kiefer, attorney for Community Builders; Dick Barbini, project engineer

2.1 Applicant's Presentation

Community Builders is asking for approval for the modifications and acceptance of the way the buildings were built so they may proceed with their financing.

Peter Freeman explained the requested modifications.

- Condition 3.1 required a 100-foot buffer between Pennywise Path and the built boundary. The buildings were built as shown on the approved plan, but the actual measurement of the buffer to two of the buildings is only 78 feet.
- One building (Building 8) was relocated at the request of the golf course.
- Some of the ADA requirements required some changes in the footprints.
- In Condition 7.1, the applicant had offered to keep trees in the common areas. In the course of construction, trees were cut. In mitigation, the applicant is offering a 60-foot no cut buffer in addition to the no-build setback from Pennywise Path. The applicant is also offering landscaping, but not for a specific dollar amount.
- There are more children than anticipated so, over the next year, the builder, managers, and residents want to be able to determine the best uses for the common areas and finalize the landscaping mitigation and plan.

Dick Barbini added that the number of buildings has not changed.

- The Pennywise Path setback was originally for structures, not for cutting. As the mitigating measure, the builder would like to add a 60-foot no-cut, no-touch zone.
- A conscious decision to cut trees was made for construction reasons.

Doug Sederholm clarified that the Pennywise Path buffer that currently exists shows the 60-foot no-cut zone the applicant is offering.

Paul Foley showed photographs and pointed out how the setback measuring discrepancy occurred.

Chris Murphy reported that LUPC is not making a recommendation to the full Commission.

Peter Freeman explained that the applicant does not now have a budget for landscaping.

- They will be submitting an application to the CPA for landscaping funding.
- The affordable housing committee, Selectmen, and town will make an earnest, good-faith attempt to help fund the landscaping.

Dick Barbini clarified that no part of the common area land is within the Town right of way.

2.2 Commissioner Discussion

Linda Sibley said the applicant originally made the offer to leave trees uncut in the common areas so the Commission didn't have extensive discussion about the purpose of not cutting the trees.

- It's clearly an environmental and aesthetic benefit to keep the buffer to Pennywise Path.
- Aesthetically, it's important that they do something in the common areas but it's not a major regional issue.
- She's comfortable with the idea of giving the applicant and Town some time to formulate a plan and taking them on good faith.
- She thinks they should replant some trees, but they shouldn't be held to reestablishing native vegetation.

Mark London recommended giving the applicant until December 31, 2008, to come back to LUPC with a use and landscaping plan for the three common areas.

Linda Sibley said it's easier for contractors to level the site than to keep vegetation. It's incumbent on the Commission to be clear that when there is a no-cut condition or offer, the applicant has to come back if there's no physical way to work around it.

Jim Athearn said the Commission needs to make conditions that have some teeth in them. In this case, he believes it's a fine idea to leave the grass areas and have the applicants come back with their plan.

John Breckenridge expressed concern about the decision-making process to use the common areas as recreation areas, in addition to the 5.7-acre recreation parcel.

- The common areas now have irrigation systems.
- There is a condition requiring water-soluble fertilizers.
- He's concerned about conditions that were agreed to.
- He would like to see a landscaping plan that's in the spirit of the original approval.

Peter Freeman clarified that the 5.7-acre recreation parcel is separate from the Morgan Woods development and will be developed by the Town.

Dick Barbini clarified that the Affordable Housing Committee envisioned leaving the common areas with trees and an understory. It wasn't an environmental decision. What evolved was a change of their minds of how those areas should be handled, both for construction and increased open space.

Peter Freeman said the violation of condition wasn't intentional bad faith. As part of the decision to change the use, the irrigation system was put in.

Susan Shea said she has a problem with all the changes happening without the engineer, the building inspector, or the resident homesite committee coming to the Commission. Coming in after the fact is very upsetting.

Mimi Davisson said it would be useful to hold a post-project review.

Andrew Woodruff said, for the record, that this is a flagrant violation. He's sympathetic to the fact that they had a construction crisis and there was urgency. However, there is no justification for not coming in for approval of the change in use before installing the irrigation system.

Paul Foley said perhaps it should be required that a certificate of compliance be issued by the MVC before a certificate of occupancy is issued by the Building Inspector.

Mark London said that in this case, the Commission seems to find the changes acceptable. However the Commission should make clear that in other cases, such a change may not be acceptable, the Commission has legal recourse, and restoring the situation according to the approved plans could be very costly to an owner.

Doug Sederholm agreed that the Commission could deny the modifications, though it's not likely in this case.

Jim Athearn asked about exterior lighting. **Dick Barbini** said that the developers may request a change in exterior lighting because of the number of children. **Peter Freeman** assured Commissioners that changes will be brought to the Commission prior to being made.

Linda Sibley moved, reluctantly, and it was duly seconded, that because each of the issues was thoroughly vetted in the public hearing, that the modifications aren't sufficiently substantial to require a public hearing.

Peter Freeman said that the developer voluntarily agrees to a project review.

1. He clarified that if the motion goes forward, the Commission is allowing the as-built plan to be approved, and modifies Section 3.1.
2. As to Section 7.1, the Commission would be accepting the cutting that took place, subject to the new condition that would be voted. A landscape plan will be submitted and will be subject to approval by LUPC and the 60-foot no-cut zone buffer will be created.

Ned Orleans clarified that the applicant's offer is *a landscaping and use plan consistent with the needs of the development.*

A voice vote was taken. In favor: 9. Opposed: 1. Abstentions: 2. The motion passed.

Linda Sibley moved, and it was duly seconded, that the Commission approve the changes as presented by the applicant, set forth in the letter of Stephanie Kiefer, Esquire, of Freeman Davis and Stearns, including the no-cut buffer for Pennywise Path and the return to the Commission for approval of landscape and use plan by December 31, 2008, and they will cooperate in general with a post hoc review of the project. Additionally the applicant will explore adding white pines to further screen the view from Pennywise Path, particularly where the red building is.

A roll call vote was taken. In favor: J. Athearn, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: J. Breckenridge. The motion passed.

There was a discussion of the role of the Edgartown Building Inspector.

- **Chris Murphy** wondered what role the Building Inspector had in enforcing the Board of Appeals permit based on the Commission's DRI Decision.
- **Dick Barbini** said the building inspector issued the building permit. He's surmising that the building inspector must have thought that the moving of the buildings was minor. The Building Inspector probably doesn't get involved in landscaping.
- **Chris Murphy** said the Building Inspector has to follow the conditions.

John Breckenridge commented that we have a shining star of a project with a slightly blackened eye; the Commission has begun discussing ways in which the conditions might be more closely followed. **Dick Barbini** said the enforcement of conditions from any board doesn't usually happen to the detail the Commission and other boards give.

Doug Sederholm added that, regardless of the discussion, Commissioners believe this is an excellent project and a credit to the community and everyone involved with it.

3. NOMINATION FOR ENERGY DISTRICT OF CRITICAL PLANNING CONCERN

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff

For the proponent: Camille Rose, Aquinnah Selectman

Doug Sederholm explained that the Commission is considering a District of Critical Planning Concern with a geographic boundary of the Town of Aquinnah above the height of 32 feet.

- The Commission's decision is whether to accept the nomination for consideration.
- The Commission's acceptance would place a moratorium on development permits, which would allow the Town to prepare to regulate and promote renewable energy projects.

Camille Rose explained that the Town has had a lot of interest in installing wind towers, geothermal systems and solar panels.

- Insofar as wind towers are concerned the Town doesn't have any regulations that would help it manage them effectively.
- In asking for the DCPC, Aquinnah is asking for Commission expertise in developing guidelines for regulating and encouraging energy conservation, which are matters of regional importance.
- The structures will affect scenic and environmental issues, as well as property values of the Town and Island.
- With geothermal, the Town is concerned that there might be unintended consequences.
- Aquinnah needs to understand what's appropriate and practical to recommend to builders in terms of house design.
- Aquinnah is requesting a limited moratorium in the form of an air rights moratorium, anything over 32 feet.

Jo-Ann Taylor explained that, should the Commission accept the moratorium, it would be on the portion of the air space over all the lands and water within the Town of Aquinnah -- except the Indian Common Lands known as the Cranberry Bogs, the Clay Cliffs, and the Herring Creek -- which exceeds 32 feet in height above mean natural grade and/or mean sea level.

- Should the Commission vote to accept the nomination, it would be instituting a limited development moratorium on projects over 32 feet in height. It would save everyone from the burden of a townwide moratorium and a full moratorium isn't necessary, because the entire town is already a DCPC.
- The Commission would be committing to a public hearing within 60 days and a vote on the designation of the DCPC.
- A moratorium would give the Town the chance to work out the regulations it feels is necessary to regulate and encourage energy conservation.
- The Commission has 45 days from October 31st to vote to accept the nomination and 60 days from the vote to hold the public hearing, prepare the guidelines, and vote.

Mark London suggested adding "exceeds 32 feet in height above mean natural grade over land, and/or mean sea level over water."

Richard Toole said he's a little fearful that this will be interpreted as an attempt to stop windmills. He hopes that Aquinnah gets this done as quickly as possible.

- **Camille Rose** said Aquinnah is committed to a six-month process and want to vote on the regulations at Town Meeting.

Linda Sibley echoed Richard Toole's statement. It's important that wind turbines be appropriately sited, but she won't vote for guidelines that will impede the reasonable development of wind turbines. One of the ways that Aquinnah can encourage wind turbines is to write guidelines that facilitate the permitting process.

Susan Shea said she has never known of a town that has wanted to encourage interest in energy conservation in every way, shape, and form. Aquinnah has been looking at putting a wind turbine behind the Town Hall to supply energy to Town buildings. Aquinnah needs to have some regulations in place to help people place them correctly. The more the better.

There was a discussion about the Indian Lands.

- **Jo-Ann Taylor** and **Camille Rose** clarified the following:
 - the Common Lands are already exempted from jurisdiction under Chapter 831. No other tribal lands are excluded under Chapter 831.
 - The Settlement Lands are exempt from Town regulation except for any zoning that was in existence in 1983. Any zoning that's occurred since 1983 does not apply to the Settlement Lands.
 - Lands that are not taken into trust and were not Settlement Lands, specifically the Cook property, are subject to all and current regulations and are part of the DCPC.
 - The Common Lands listed are exempted from Commission regulation, but the Commission doesn't acknowledge any other exemption from Commission review. Chapter 831 specifically excludes Cranberry Bogs, Herring Creek, and the Clay Cliffs.
- **Camille Rose** said the memo of understanding addresses the manner by which Aquinnah enforces the 1983 by-laws, but the regional authority is treated differently. She agreed that the *settlement lands* should be added to the exemption to the boundary.

Chris Murphy said he's in favor of the DCPC, but he's concerned about the possibility of someone needing to repair antennas or chimneys. Chapter 831 outlines exemptions to the moratorium that would allow for repairs.

Peter Cabana asked whether the Town has talked with the Tribe and whether the Town is aware that the Tribe is interested in putting up a wind turbine, starting with a wind anemometer.

Camille Rose explained that Aquinnah has already issued a special permit for the wind anemometer; it won't be affected by the moratorium and the settlement lands aren't covered by moratorium.

Paul Strauss said getting a better grip on energy use on the Island is important and the Commission should be grateful that Aquinnah is starting the process.

Paul Strauss moved, and it was duly seconded, to accept the proposed nomination for reasons:

- ***The small size of the town***

- ***Further protection of the landscape with effective management of resources.***
- ***The current regulations don't afford protections necessary.***
- ***Guidelines would encourage efficient responsible building construction.***

Mimi Davisson said staff will have to develop guidelines and she wants to make sure staff is prepared to deal with developing guidelines over the two-month time period.

A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

Camille Rose, moving to another topic, explained that the court found in favor of the Town and MVC in the Decoulis case, saying that the town-wide DCPC was legitimate.

4. VINEYARD HOUSE: DRI NO. 582 – REQUEST FOR EXTENSION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Doug Sederholm explained that the project, approved with conditions, is being built off of Holmes Hole Road.

Christina Brown moved, and it was duly seconded, to extend the approval as written, because it's a good project, and there have been no changes to the Commission's land use policies that would impact the project. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: None. A voice vote was taken.

4. OTHER

Chilmark wrote a letter informing the Commission that they're having a public hearing on November 13th to discuss bylaw amendments related to wireless communications.

The Commission has received a copy of an application to Edgartown for a tidal energy project at Muskeget Channel.

Viera Park applicants have requested a one-month postponement.

5. EXECUTIVE DIRECTOR'S REPORT

Proceedings from last summer's Island Plan forums are available on the Island Plan website (www.islandplan.org) or from the MVC.

A Webinar on the rules and responsibilities of planning and zoning officials will be held on November 6th.

piggyback, but they don't seem to be there yet. Applicants are being given the draft policy. The policy has to go back to the subcommittee; we should aim to have a revised version by the end of the year.

The meeting adjourned at 9:10 p.m.


Chairman


Clerk-Treasurer

2-21-08
Date

2-29-08
Date